

Supreme Court, U. S.

FILED

FEB 1 1977

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL RODAK, JR., CLERK

October Term, 1976

No. 76-1055

STANLEY V. TUCKER,

Petitioner

-v-

PEOPLES SAVINGS BANK - BRIDGEPORT

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF CONNECTICUT

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No. _____

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PEOPLES SAVINGS BANK - BRIDGEPORT

PETITION FOR A WRIT OF CERTIORARI TO THE
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Petitioner prays that a writ of certiorari issue to review the judgment of the Conn. Supreme Court made November 3rd, 1976 and entered 11-8-76.

CITATIONS TO OPINIONS BELOW

The opinion of the Connecticut Supreme Ct is printed in the Appendix, infra A-1, and

-2-

and the Motion for Appointment of Receiver of Rents dated March 9th, 1976 is printed in Appendix A-2. The Findings of the Court dated November 2, 1976 as to the Receiver of Rents is printed in A-3. The Plea in Abatement dated March 8th, 1976 and the Amendment of April 12, 1976 with the order of May 6th, 1976 are printed in A-4. The statute complained of as unconstitutional namely, G. S. 52-504, is printed in the Appendix, A-5.

JURISDICTION

The judgment of the Connecticut Supreme Court was made November 3, 1976 and entered November 8, 1976. The jurisdiction of this Court is invoked under Title 28 USC 1257 (3).

COMPANION CASE

An identical petition for certiorari is filed on or about the same date as this instant petition. The issues in the companion action, *Tucker v Hartford National Bank & Trust Co*, No. _____, are identical as a Rent Receiver was appointed under the same statute complained of and while in that action the plea in abatement was granted but in this action the same plea in abatement was overruled, compare Appendix A-4 herein with A-4 of the companion action. However, after the action below was abated a motion to amend the return was granted.

Granting of this petition should lead to an automatic granting of the companion petition and the reverse is also true.

QUESTIONS PRESENTED

1. Where Petitioner claims he had been deprived under color of state law, of property without procedural due process or equal protection of the laws is a substantial federal question raised?
2. Where billions of dollars of real property is being foreclosed in Connecticut yearly without procedural due process should not this Court Grant Certiorari to review the deprivation of fundamental federally guaranteed rights?
3. Where the appointment of "rent receivers" is being carried out on motion without grounds being set out in the motion or at hearing and without supervision of the rent receiver by a state officer is this not an "independent proceeding" warranting review on appeal?

4. Does Connecticut's Receivership statute GS 52-504 violate the minimum requirements set out by this Court in its decision in Fuentes v Shevlin 407 US 67.

5. Does the lack of any standards in GS 52-504 permits its wanton use for carrying out fraudulent seizures without due process of Billions of dollars of real estate in Connecticut by "fat cat" predatory banks.

6. Is a pre-judgment appointment of rent receiver appealable under GS 52-278 1.

CONSTITUTIONAL & STATUTORY PROVISIONS

1. This case involves a denial of procedural due process and equal protection of the laws, the fifth and fourteenth amendments to the U. S. Constitution.

2. This case involves Conn G. S. 52-504 challenged as void and unconstitutional and set out in Appendix A-5.

3. This case involves the jurisdictional statute GS 52-278 1 defining as an "appealable order" any order granting a Pre-Judgment Remedy.

STATEMENT OF THE CASE

Factual Background: In this action the Petitioner was paid in full on mortgage and insurance while taxes were paid due to appeals with statutory overpayments. However, in the face of objections from the Petitioner the Peoples Savings Bank on Oct 1976 entered into a rent collection scheme that was so poorly administered and caused such large losses in cash flow that now the Peoples Savings Bank went into the Hartford Superior Court and on strength of losses it created obtained an order for a Rent Receiver. The Rent Receiver who was a law associate of attorney for Peoples Savings Bank - if not his informal partners - as they both

inspected together and destroyed all cash flow to the extent that over \$24,000 in rent losses materialized and almost 100% of the tenants vacated the premises leaving vandals and/ or narcotics addicts to enter and vandalize and destroy the interior to the extent that over \$100,000 in loss of market value took place.

With the market value destroyed the Bank now appeared in court claiming the property valueless and requesting "strict" foreclosure to seize the entire equity without payment of one penny.

Statute Challenged as Unconstitutional

This action challenges the constitutionality of Conn G. S. 52-504 permitting the seizure of private property without procedural due process and without the constitutional safeguards mandated by recent civil rights decisions .

Pursuant to the Statute complained of:

1. Plaintiff seized under color of state law private property of Defendant without any justification in law or equity.
2. Plaintiff proceeded by bad faith mismanagement to cause losses of over \$24,000 in rental income over a one year period.
3. Plaintiff, classed as a predatory "fat cat" bank then used the bad faith losses it created to claim a "default" on the mortgage.
4. Without a "probable cause" hearing and without any grounds given in violation of Conn Pre-Judgment Remedy Act, GS 52-278 a-b c-d-e-f-g Plaintiff applied for and received an order for a rent receiver.
5. At the time Plaintiff commenced the contested and illegal "rent receivership" the Defendant was paid in full on mortgages & taxes.

FACTUAL BACKGROUND OF CONSTITUTIONAL LITIGATION IN CONN. OVER PROCEDURAL DUE PROCESS.

In May of 1970 plagued with unconscionable attachments made without notice or hearing arising from a fire in a building under construction this Petitioner filed his first suit in the UNITED STATES DISTRICT COURT - CONNECTICUT challenging on constitutional grounds the attachment statute as it then existed, GS 52-279.

The action was dismissed by the District Court and dismissal upheld by the Second Circuit Court of Appeals and This Court granted Certiorari. Tucker v Maher, 405 U. S. 1052.

On remand hearing was held before a Three-Judge District Court and three days after hearing before decision was rendered former Governor Meskill signed into law

the legislative by-product of this litigation, namely PA 73-431 now GS 52-278 a b c d e f g.

This present petition falls squarely within the factual and constitutional confines of the former Petition, granted in Tucker v Maher, supra, and within the confines of all of the important actions upheld by this Court in recent years upholding on constitutional grounds challenges to statutes that permit the impounding of private property without procedural due process and without minimum constitutional safeguards.

It is called to the attention of This Court that Rent Receiverships granted in large volumes under similar conditions in Connecticut State Courts today are in total violation of PA 73-431 prohibiting all pre-judgment remedies (except temporary restraining orders) without prevailing on a probable cause hearing on notice.

Because of severe inflation coupled with lack of ready financing Billions of Dollars

in real estate in Connecticut is being foreclosed at an increasing rate all in violation of the Constitution and the Amendments thereto.

SUBSTANTIAL REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH U.S. SUPREME COURT DECISIONS

The primary thrust of Appellant's challenge to the constitutionality of Conn. G. S. 52-504 stems from Snaidach v Family Finance 395 US 337 (1969) and its follow on cases. The substantial federal question raised in this Petition is identical to the Snaidach federal question.

A-1 THE DECISION CONFLICTS WITH SNAIDACH

The Connecticut Supreme Court amply briefed on oral arguments as to conflicts with the Pre-judgment Remedy Act, PA 73-431,

and with leading decisions of this Court, especially Fuentes v Shevlin, supra, wherein the special conditions were clearly delineated as to when a pre-judgment remedy may be granted without the procedural due process by its decision dismissing Petitioners appeal, impliedly denied all of his constitutional argument and all of his federal questions at issue herein.

Snaidach at P 339 : "Such summary procedure may well meet the requirements of due process in extraordinary situations. Cf, Fahey v Mallone 332 US 245, 253-254, Ewing v Mytinger & Casselberry, Ins. 339 US 594, 598-600; Ownby v Morgan 256 US 94, 110-112, Coffin Bros v Bennett 277 U S 29, 31. But the present case presented no situations requiring special protection to a state or to a cre-

ditor is presented by the facts; nor is the Wisconsin statute narrowly drawn to meet any such unusual conditions"

The words of wisdom quoted above from Snайдach, *supra* are most pertinent to the complaint levied herein at Conn G. S. 52-504 which by its total lack of standards and loosely drawn content permits bad faith or fraudulent creditor actions in violation of the U. S. constitution and the amendments to seize with predatory intent Billions of dollars in Connecticut real estate.

A-2 THE DECISION CONFLICTS WITH BODDIE

The principle expressed in Boddie v Conn. 91 S Ct 780, is that ABSENT A COMPELLING COUNTERVAILING STATE INTEREST OF OVERRIDING SIGNIFICANCE, persons must be given a meaningful opportunity to be heard.

Boddie, *supra* at P 785: "This Court voiced the doctrine that wherever one is assailed in his person or his property there he may defend."

This compelling doctrine is violated ruthlessly by large banks and / or lending institutions that seek to use unfair means to deprive citizens of Connecticut of a fair hearing soley for purposes of depreciating real property so that large equities can be illegally seized in violation of the Constitution and the Amendments by appointment of a hand picked "Rent Receiver" who works to put through a "strict" foreclosure whereby the Bank can seize the entire equity of the Debtor without payment of a single penny.

It is difficult to describe conditions more obnoxious to the U. S. Constitution and the Amendments thereto. Certainly none of the leading civil rights cases in recent decades wherein this Court upheld due process and equal protection challenges to state statutory schemes permitting impounding of

private property without procedural due process are as repugnant as the actions complained of herein.

II. THE DECISION OF THE SUPREME COURT OF CONNECTICUT DISMISSING PETITIONERS APPEAL VIOLATES THE STATUTE G S 52-278 1 MAKING ALL PRE-JUDGMENT ORDERS APPEALABLE.

In this action the state court order made in the Superior Court of Litchfield appointing a Rent Receiver and granting a motion to Amend the Return was promptly and timely appealed to the Connecticut Supreme Court. This appeal was taken pursuant to the Pre-Judgment Remedy Act, PA 73-431 adopted May 30th, 1973 only days after this Petitioner had appeared before a Three-Judge District Court on remand from the UNITED STATES SUPREME COURT in Tucker v Maher, 405 US 1052, where this Petitioners prior challenge to similar deficiencies in Conn. attachment statutes had been upheld.

The Pre-Judgment Remedy Act was amended by the Connecticut Legislature on June 2, 1976 to specifically make orders, like the one on appeal herein, final for purposes of appeal.

PA 76-401 Sec 4 (now GS 52-278 1) :

"(a) An order granting or denying a pre-judgment remedy... shall be deemed a final judgment for purposes of appeal."

note - underline added.

CONCLUSION

This Petitioner expresses gratitude for himself and for all Connecticut citizens for former granting of Certiorari in Tucker v Maher, 405 US 1052, and asks This Honorable Court once more on this identical challenge on the strength of GS 52-278 1 to grant certiorari and to summarily remand for further proceedings.

RESPECFULLY SUBMITTED:

STANLEY V. TUCKER/
PETITIONER

A-1

No 201542

PEOPLES SAVINGS BANK- BRIDGEPORT

-v-

STANLEY V. TUCKER

November 3, 1976

The Plaintiff's motion to dismiss the appeal from the Superior Court in Hartford County is granted.

A- 2

No 201542

PEOPLES SAVINGS BANK : Superior Court

-v- : Hartford County

STANLEY V. TUCKER : March 9th, 1976

Motion for Appointment of Receiver of Rents

The plaintiff in the above entitled action respectfully moves this Court to appoint a Receiver of REnts.

PLAINTIFF

By _____

Entered on the Docket 11-8-76

By the Court,

John
Chief Justice

No 201542

PEOPLES SAVINGS BANK : Superior Court
 -v- : Hartford County
 STANLEY V. TUCKER : November 2, 1976

In Re Findings

The motion for appointment of receiver of rents was heard on the short calendar on April 2, 1976, at which time the attorney for the plaintiff and the defendant, STANLEY V. TUCKER, were fully heard. The decision of the court was based on their statements and representations. The court's memorandum of decision, dated April 5th, 1976 was filed.

No testimony, under oath, was presented and there is no transcript of the arguments on the motion available. Consequently the court cannot make any findings.

s/

A. J. ARMENTANO J.

No 201542

Plea in Abatement March 8th, 1976

The Defendant pleads in abatement that the court has no jurisdiction because:

1. Defective service by Sheriff in that return shows service at 963 Capitol Ave, Hartford, a 14 family building and Defendant resides and maintains his abode not at 963 Capitol Ave but in Apt B 4 thereof.

.....

STANLEY V. TUCKERAmendment to Plea in Abatement April 12, 1976

4. The Sheriff's return is defective and fails to conform to statute requiring showing of abode service at proper address of defendant, namely Apt B 4, 963 Capitol Ave, Hartford.

.....

STANLEY V. TUCKERO R D E R

The Plea in Abatement and the Amendment to Plea overruled. May 6, 1976

RUBINOW L.

G. S. 52-504 Complained of As Unconstitutional

§ 52-504. Application for receiver; orders of judge

When any action is brought to or pending in any court of equitable jurisdiction in which an application is made for the appointment of a receiver, any judge of such court or of the superior court, when such court is not in session, after due notice given, may make such order in the premises as the exigencies of the case may require, and may, from time to time, rescind and modify the same, and shall cause his proceedings to be certified to the court in which the action may be pending, at its next session. (1949 Rev., § 8240.)